IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

MFA.No. 126 of 2002(C)

IC.100/1999 of EMPLOYEES INSURANCE COURT, ALAPPUZHA

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APPELLANT: APPELLANT/RESPONDENT:

THE REGIOHAL DIRECTOR, E.S.I.
CORPORATION, PANCHADEEP BHAVAN, NORTH SWARAJ ROUND
POST BAG NO.3, THRISSUR - 682 001.

BY ADV. SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

RESPONDENTS: RESPONDENT/APPLICANT:

K P B ADVIERTISING (P) LIMITED,
CARMEL BUILDING, BANERJI ROAD,
COCHIN-682 018 REPRESENTED BY ITS
EXECUTIVE DIRECTOR, T.O. PHILIP.

BY ADV. SRI.M.C.CHERIAN
SMT.SARAMMA CHERIAN
SMT.ASHA CHERIAN
SRI.E.D.GEORGE
SRI.SABU S.KALLARAMOOLA
SRI.P.M.SANEER

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 126 of 2002

Dated this the 6th August, 2007.

J U D G M E N T

The Regional Director, Employees State Insurance Corporation, Thrissur, is the appellant. Appeal is filed against the judgment passed by the Insurance Court, Alappuzha, by which, it allowed an application filed by the respondent, challenging the imposition of interest and damages.

2. The short facts necessary for the disposal of the appeal are as follows. The respondent is running an advertising agency. The appellant took up a stand that it is a shop, and therefore, is liable to be covered under the Employees State Insurance Act. That order was challenged before the Insurance Court, as I.C.No.60/1986. That application was dismissed. The respondent filed M.F.A.No.209/1988 before this Court. A Division Bench of this Court allowed the appeal and held that it was not a shop. The appellant challenged that decision before the Supreme Court. The Honourable Supreme Court set aside the judgment of this Court, and held that the establishment of the respondent will come within the

purview of the term 'shop', and it is coverable. Thereafter, the contribution was demanded. The appellant took up a stand that since there is delayed payment, the respondent is liable to pay interest. It also found that the respondent is liable to pay damages. Challenging those orders, respondent filed I.C.No.100/99 before the Insurance Court. The Insurance Court found that the delay occurred on account of the fact that there was a bona fide dispute regarding the liability of the respondent to pay contribution. It was found that, that order became final only when the Apex Court found that the respondent was liable to pay contribution. It was held that the respondent paid contribution within 21 days from the date of demand, and, as such, it was not liable to pay any interest, and it was also found that the appellant was not liable to pay damages, allowed the application and quashed the demand made by the appellant. Challenging those orders, this appeal is filed.

3. The learned counsel appearing for the appellant has argued that in claiming interest and damages, there is no period of limitation, and the period of limitation is only for filing a petition, before the Insurance Court. It is also argued that under Section 39(5) of the Employees State Insurance Act, and Regulation 31A of the

Employees State Insurance (General) Regulations, 1950, does not give any discretion to the Corporation to exempt the employer from liability to pay interest on delayed payment or ESI contribution. In **Cannanore Drug Lines v. E.S.I.Corporation** (2007 (1) KLT 880), a Division Bench of this Court found that the bona fide impression of the appellant that his establishment was not covered under the provisions of the E.S.I. Act or the pendency of a dispute before the E.S.I. Court regarding the appellant's liability to pay E.S.I. contribution cannot be a valid ground for exempting the appellant from paying interest in terms of Section 39(5)(a) of the Employees State Insurance Act, and Regulation 31A of the Employees State Insurance (General) Regulations, 1950. In view of the principle contained in Cannanore Drug Lines, (Supra) the view taken by the Insurance Court that since the respondent had paid the contribution within 21 days from the date of service of demand, it is not liable to pay interest is unsustainable and liable to be set aside.

4. Regarding the quantum of damages claimed under Section 85B of the Employees State Insurance Act, the learned counsel appearing for the appellant has argued that it is automatic and there is no discretion given to the appellant. In **E.S.I. Corporation v.**

Premanandan (2007 (2) KLT 666), it was held that the provisions contained in Regulation 31C of the Employees State Insurance (General) Regulations, 1950, is only a guideline in the matter of imposition of damages and percentage fixed is not absolute. As per the above principle, that will have to be considered again by the appellant itself. So, while allowing the appeal, I set aside the order passed by the appellant, and direct the appellant to reconsider the matter, in view of the principles stated above.

In the result, the appeal is allowed in part. The judgment of the Insurance Court allowing I.C.No.100/99 is hereby set aside. The appellant is directed to reconsider the matter again and pass fresh orders, in accordance with law.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 126 of 2002

J U D G M E N T

Dated:6th August, 2007.